

BEFORE THE
UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Holman Post Office
Holman, New Mexico

Docket No. A2012-18

REPLY BRIEF OF THE PUBLIC REPRESENTATIVE

(January 9, 2012)

I. INTRODUCTION AND BACKGROUND

On October 18, 2011, the Commission docketed a petition to review the closing of the Holman Post Office.¹ On October 24, 2011, the Commission issued an order instituting the current review proceedings, appointing a Public Representative, and establishing a procedural schedule.² Thereafter, on November 2, 2011, the Postal Service filed an electronic version of the administrative record concerning its Final Determination, Postal Service Docket Number 1367246 - 87723.³

¹ Letter by Alex Medina, October 18, 2011. The Commission received nine additional petitions regarding the closing of the Holman Post Office: (1) Letter filed by Susie Maestas, October 19, 2011; (2) Letter filed by Dorcas Gloria Ellen Medina, October 19, 2011; (3) Letter filed by Mark Montoya, October 19, 2011; (4) Letter filed by Jerry Cruz, October 19, 2011; (5) Letter filed by Helen Olivas, October 19, 2011; (6) Letter filed by Vicki Harvey, October 19, 2011; (7) Letter filed by Ed Cossin, October 19, 2011; (8) Letter filed by the Holman Community, October 26, 2011 (Holman Community Letter); and (9) Letter filed by Jack Rains, November 1, 2011. Collectively, these comments refer to the authors of the letters received in this docket as "Petitioners."

² Notice and Order Accepting Appeal and Establishing Procedural Schedule, October 24, 2011. (Order No. 922).

³ United States Postal Service Notice of Filing, November 2, 2011. (AR).

On November 22, 2011, Petitioners Jack Rains and the Holman Community filed Participant Statements in lieu of formal legal briefs in which they set forth objections to the closure of Holman Post Office.⁴ Later, on November 28, 2011, Petitioner Vicki Harvey filed a Participant Statement.⁵ The Postal Service filed comments supporting its closure determination on December 23, 2011.⁶ The Postal Service filed revised comments on December 27, 2011.⁷

II. STATEMENT OF FACTS

The Holman Post Office is an EAS-11 level post office in Holman, New Mexico. AR, Item No. 1 at 1. The Holman Post Office provides service to 156 post office box customers.

On March 16, 2011, the Manager of Postal Operations requested permission to investigate the possible closure of the Holman Post Office. *Id.* The District Manager approved the request. *Id.*

On April 5, 2011, the Postal Service notified customers of the Holman Post Office of a "possible change in the way your postal service is provided." AR, Item No. 21 at 1. As described in the notice, customers were given the option of receiving delivery via a highway contract route administered out of the Las Vegas Post Office to CBUs erected in Holman. *Id.* Included was a questionnaire to be completed and returned by April 19, 2011. *Id.* In addition, customers were invited to attend a public meeting on April 19,

⁴ Participant Statements of Jack Rains and the Holman Community, November 22, 2011.

⁵ Participant Statement of Vicki L. Harvey, November 28, 2011.

⁶ United States Postal Service Comments Regarding Appeal, December 23, 2011. (Postal Service Comments). The Postal Services comments were originally due on December 12, 2011, but the deadline was extended to December 23, 2011. See Motion of United States Postal Service for Extension of Time to file Comments in Response to Petitioners' Submissions, December 20, 2011. *Also see* Order Granting Motion for Extension of Time and Modifying the Procedural Schedule, December 22, 2011. (Order No. 1070).

⁷ United States Postal Service Comments Regarding Appeal, Revised December 27, 2011. (Revised Postal Service Comments).

2011, at which Postal Service representatives would be available to answer questions and provide information about the discontinuance study. *Id.*

Of the 161 questionnaires distributed by the Postal Service, 102 were completed and returned: 6 responded favorably to the proposal; 71 expressed opposition or concern; and 25 expressed no opinion. AR, Item No. 23 at 1. The meeting was held on April 19, 2011, as scheduled with 116 customers in attendance. AR, Item No. 24A. At the meeting, the Holman community submitted a petition with 167 signatures in support of retaining their post office.⁸

On April 27, 2011, a formal proposal to close the Holman Post Office was forwarded to that post office for posting for a period of sixty days. AR, Item No. 31 at 1. An invitation to file comments was also posted in the Holman Post Office. AR, Item No. 31 at 1. 49 comments were received during the posting period that ended July 10, 2011. AR, Item No. 40 at 1. That proposal was transmitted to the Vice President for Delivery and Post Office Operations on August 19, 2011. AR, Item No. 45 at 1.

On June 6, 2011, the Postal Service's Government Relations department received a congressional inquiry from Congressman Ben Ray Luján concerning the handling of the Holman Post Office discontinuance study. AR, Item No. 28 at 6-7. As a result, the Postal Service held a second public meeting on July 20, 2011. AR, Item No. 25 at 4-9. Three postal managers were available to discuss the possible discontinuance of the Holman Post Office in more detail. At the meeting the Postal Service provided a deadline for additional feedback from Holman residents of July 23, 2011. *Id.* at 9

On September 11, 2011, the Final Determination to close the Holman Post Office was approved. FD at 16. The decision was based upon (1) a vacant postmaster position; (2) a decline in workload; and (3) an average growth of -2.8 percent over three years. *Id.* at 2. The Final Determination considered and responded to various concerns expressed by postal customers in response to the proposal to close the Holman Post Office. *Id.*

⁸ See AR, Item No. 33A at 1. See also AR, Item No. 47 at 2 which indicates the petition contained 222 signatures.

III. POSITIONS OF THE PARTIES

A. The Petitioners

The Petitioners present five arguments in opposition to the closing of the Holman Post Office: (1) the Postal Service did not adequately consider the effect of the closing on the Holman community; (2) the Postal Service did not sufficiently consider the impact of the closing on maintaining maximum degree of effective and regular postal services for the Holman community; (3) the postmaster vacancy is not an reasonable justification for considering the Holman Post Office for closure; (4) the Postal Service did not adequately consider the alternatives presented by the community at the public meeting; and (5) the Postal Service's economic savings were incorrectly calculated .

B. The Postal Service

On December 23, 2011, the Postal Service filed comments in lieu of the answering brief permitted by Order No. 922. In that filing, the Postal Service supports its decision to close the Holman Post Office, on the basis that it has (1) followed the proper procedural requirements of 39 U.S.C. 404(d); (2) considered the impact on the community; (3) considered the impact on the closing on maintaining effective and regular service; (4) properly considered the economic savings that would result from the closing; (5) considered the effect on postal employees; and (6) considered other factors consistent with the mandate of 39 U.S.C. 404(d)(2)(A). Revised Postal Service Comments at 3-16.

IV. STANDARD OF REVIEW AND APPLICABLE LAW

A. Standard of Review

The Commission's authority to review post office closings provided by 39 U.S.C. § 404(d)(5). That section requires that the Postal Service's determination be reviewed on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and

conclusions that it finds are: (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (B) without observance of procedure required by law; or (C) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

B. The Law Governing Postal Service Determinations

Prior to making a final determination to close or consolidate a post office, the Postal Service is required by 39 U.S.C. § 404 to consider: (i) the effect of the closing on the community served; (ii) the effect on the employees of the Postal Service employed at the office; (iii) whether the closing is consistent with the Postal Service's provision of "a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;" (iv) the economic savings to the Postal Service due to the closing; and (v) such other factors as the Postal Service determines are necessary. See 39 U.S.C. § 404(d)(2)(A).

In addition, the Postal Service's final determination must be in writing, address the aforementioned considerations, and be made available to persons served by the post office. 39 U.S.C. § 404(d)(3). Finally, the Postal Service is prohibited from taking any action to close a post office until 60 days after its final determination is made available. 39 U.S.C. § 404(d)(4).

V. ADEQUACY OF THE POSTAL SERVICE'S FINAL DETERMINATION

After careful review of the Postal Service's Final Determination, the materials in the Administrative Record, the arguments presented by Petitioners and the Petition submitted by customers of the Holman Post Office, and the Postal Service Comments, the Public Representative concludes that although the Postal Service has followed applicable procedures, the decision to close the Holman Post Office is arbitrary and

capricious, and it is not supported by substantial evidence. In addition, the Public Representative observes that the economic savings were not properly considered. All three points are discussed below.

A. The Decision to Close the Holman Post Office is Arbitrary and Capricious

The Postal Service's decision to close the Holman Post Office is arbitrary and capricious for two reasons: (1) the postmaster vacancy issue; and (2) the general handling of the discontinuance study.

Postmaster vacancy issue. Throughout the Administrative Record and the Final Determination, the Postal Service includes the language "the postmaster position became vacant when the postmaster passed away on August 26, 2010." The Petitioners note that the postmaster was involved in a tragic car accident.⁹ It seems rather insensitive to consider the Holman Post Office for closure a few months after the passing of its postmaster. Even worst, to include the above statement concerning the postmaster in the Notice to Customers, at the public meeting, and in the Final Determination gives off an impression that the Postal Service does not care about the community's feelings regarding their deceased postmaster.

The Petitioners assert that the only reason the Holman Post Office was considered for vacancy was because of the vacant postmaster position. In fact, the Petitioners assert that the Postal Service admits this fact in the public meeting. See Holman Community Letter at 2. As some Petitioners note, the Postal Service failed to fulfill the vacant position. This implies that had the Postal Service immediately filled the position after the postmaster passed, the Holman Post Office would not have been considered for closure.¹⁰

⁹ Holman Community Letter at 1.

¹⁰ This fact alone would not have precluded the Postal Service from undergoing a discontinuance study to close the Holman Post Office at a later time.

General handling of the discontinuance study. Although the Postal Service followed its applicable procedures to reach its determination, the handling of the discontinuance study brings into question whether the determination was arbitrary and capricious. The Petitioners assert that the determination appears pro forma and that no matter what alternatives customers suggested, the Holman Post Office would be closed. The Public Representative believes that the Petitioners assertions have merit.

The Postal Service's handling of the first public meeting raises concerns. The public meeting was originally scheduled for 11:00 a.m. at the Holman Post Office. AR, Item No. 21 at 1. However, in a letter to Senator Thomas Udall describing their dissent with the public meeting, members of the Holman community explained that they felt that such an early time would result in minimal attendance. AR, Item No. 28 at 1. The letter explained that as a result, the members requested a later time that would allow more residents to attend. *Id.* The letter further explained that the Postal Service initially would not change the meeting time, and it only changed the time once a representative from National Association of Postmasters of the United States (NAPUS) contacted the Postal Service. *Id.* The meeting was changed to 5:30pm at the Mora Post Office. *Id.*; and AR, Item No. 24A. The letter asserted that the Mora Post Office was not a sufficient location for the public meeting, and in the end, the Postal Service moved the meeting outside in the cold. In addition, the letter asserts that the postal representative did not write any of the communities concerns down, explaining that she could remember everything.

This type of handling does not bode well for the Postal Service. It comes across as if the Postal Service is merely implementing the required steps on its checklist without much regard for the community.

B. The Determination is Not Supported in the Record

With the assistance of Congressman Ben Ray Luján,¹¹ the Holman residents were given a second public meeting. The Petitioners explained that at the second public meeting, Holman residents proffered alternatives to closing the Holman Post Office, and requested the Postal Service show cost benefit analyses for their suggested alternatives. In addition, the Petitioners explained that the Postal Service promised to provide such analyses prior to making a determination to close the Holman Post Office. The Postal Service's Administrative Records and Final Determination fail to present such analyses.

Consequently, the Commission must remand the determination to have the Postal Service adequately study the Petitioners' alternatives. In doing so, the Commission will ensure that the Postal Service give the Holman residents their just due and effectively demonstrate that it has considered all alternatives. This would eliminate concerns that the discontinuance process to close the Holman Post Office was pro forma.

While the Postal Service is studying alternatives, the Public Representative suggests the Postal Service consider the Cleveland Post Office as a viable alternative to its current plans. The Final Determination states that delivery and retail services will be provided by the Las Vegas Post Office, which is 37 miles from Holman. FD at 2. The Public Representative contends that the Cleveland Post Office is only 3.3 miles from the Holman office, which is much closer than the 37 miles to travel to the Las Vegas Post Office.

It seems peculiar that the Cleveland Post Office, which has 406 available post office boxes, was not considered as the administrative and retail office for Holman customers. Currently, an HCR carrier emanating from the Las Vegas Post Office delivers mail to both the Holman and Cleveland Post Offices. Therefore, having the

¹¹ See AR, Item No. 28 at 6-7, which contains Representative Luján's letter to the Postal Service's Government Relations Office.

residents go to the Cleveland Post Office to retrieve their mail, in lieu of establishing cluster boxes in Holman, seems more feasible. In addition to eliminating the concerns expressed by the Holman community regarding cluster boxes in Holman, the Public Representative's alternative would save costs related to the HCR carrier stopping in Holman.

C. Economic Savings were not Properly Considered

The Postal Service estimates that it will save \$39,398 (largely based on postmaster salary and fringe benefits savings) annually from closing the Holman Post Office. The Petitioners assert that the Postal Service's economic savings should have considered the forgone revenue generated from the 156 post office boxes, as well as revenue from retail transactions.¹² The Public Representative agrees with the Petitioners and contends that the Postal Service should produce more realistic economic savings.

The Postal Service's Highway Contract Route (HCR) Cost Analysis assumes that all customers would receive HCR delivery. See AR, Item No. 17 at 1. Therefore, consistent with this assumption, the Postal Service should, at minimal, determine the revenue forgone when these 156 customers receive HCR delivery. In its Reply Comments, the Postal Service states that the revenue from P.O. Box is a relatively small proportion of an office's total revenue and that it has no way of predicting whether customers will obtain P.O. Box service at nearby locations or select carrier delivery service. Postal Service Comments at 12. The Public Representative contends that the Postal Service could easily add a question on its questionnaire to obtain community-specific information, which would be better than its current method.

In addition, the Postal Service fails to address the Petitioners concerns regarding factoring in the revenue from retail transactions. Currently, the Holman Post Office

¹² Holman Community Letter at 2.

earns, on average, \$26,000 annually. FD at 2. The Petitioners assert that there will be a decrease in package shipments because Holman residents will opt for home delivery by UPS or Fed Ex. The Petitioners assert that it is reasonable to estimate that as much as half of the revenue would disappear. This is not refuted by the Postal Service. The Postal Service should determine a way to estimate how much revenue it expects to earn once a post office is closed.

VI. CONCLUSION

For the reasons set forth above, the decision of the Postal Service to close the Holman Post Office should be remanded.

Respectfully Submitted,

/s/ Derrick D. Dennis
Derrick D. Dennis
Public Representative

901 New York Avenue, N.W.
Washington, D.C. 20268-0001
(202) 789-6835; Fax (202) 789-6891
derrick.dennis@prc.gov